

CHAPTER 246 REAL PROPERTY TAX LAW

Not Administered by the State. See Hawaii Revised Statutes Volume No. 4 for coded sections.

[CHAPTER 246A TRANSFER OF REAL PROPERTY TAXATION FUNCTIONS]

Not Administered by the State. See Hawaii Revised Statutes Volume No. 4 for coded sections.

CHAPTER 247 CONVEYANCE TAX

Section

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Cross Reference

Tax Information Release No. 89-1, "Conveyance Tax on Certain Time Share Conveyances"
 Tax Information Release No. 89-11, "The Administration and Application of the Conveyance Tax Law"
 Tax Information Release No. 89-12, "The Administration and Application of the Conveyance Tax Law"
 Tax Information Release No. 90-11, "The Administration and Application of the Conveyance Tax Law"
 Tax Information Release No. 97-4, "Application of the Business Entity Classification Rules Under the 'Check-the-box' Regulations to the Hawaii Income Tax and Other Taxes"

18-247-1 §247-1 Imposition of tax. There is hereby imposed and shall be levied, collected, and paid, a tax as hereinafter provided, on all transfers or conveyances of realty or any interest therein, by way of deeds, leases, subleases, assignments of lease, agreements of sale, assignments of agreement of sale, instruments, writings, and any other document, whereby any lands, interests in land, tenements, or other realty sold shall be granted, assigned, transferred, or otherwise conveyed to, or vested in, the purchaser or purchasers, lessee or lessees, sublessee or sublessees, assignee or assignees, or any other person or persons, by the person's or their direction. [L 1966, c 10, pt of §1; HRS §247-1; am L 1968, c 5, §2; am imp L 1984, c 90, §1; gen ch 1985]

Cross Reference

Tax Information Release No. 92-2, "The Administration and Application of the Conveyance Tax Law"
 Tax Information Release No. 2001-1, "The Application of Certain Hawaii Taxes to Qualified Subchapter S Subsidiary Corporations, Qualified Subchapter S Trusts, and Electing Small Business Trusts"

18-247-2 **§247-2 Basis and rate of tax.** The tax imposed by section 247-1 shall be based on the actual and full consideration (whether cash or otherwise, including any promise, act, forbearance, property interest, value, gain, advantage, benefit, or profit), paid or to be paid for all transfers or conveyance of realty or any interest therein, that shall include any liens or encumbrances thereon at the time of sale, lease, sublease, assignment, transfer, or conveyance, and shall be at the following rates:

- (1) Except as provided in paragraph (2):
 - (A) Ten cents per \$100 for properties with a value of less than \$600,000;
 - (B) Twenty cents per \$100 for properties with a value of at least \$600,000, but less than \$1,000,000; and
 - (C) Thirty cents per \$100 for properties with a value of \$1,000,000 or greater; and
- (2) For the sale of a condominium or single family residence for which the purchaser is ineligible for a county homeowner's exemption on property tax:
 - (A) Fifteen cents per \$100 for properties with a value of less than \$600,000;
 - (B) Twenty-five cents per \$100 for properties with a value of at least \$600,000, but less than \$1,000,000; and
 - (C) Thirty-five cents per \$100 for properties with a value of \$1,000,000 or greater,

of such actual and full consideration; provided that in the case of a lease or sublease, this chapter shall apply only to a lease or sublease whose full unexpired term is for a period of five years or more, and in those cases, including (where appropriate) those cases where the lease has been extended or amended, the tax in this chapter shall be based on the cash value of the lease rentals discounted to present day value and capitalized at the rate of six per cent, plus the actual and full consideration paid or to be paid for any and all improvements, if any, that shall include on-site as well as off-site improvements, applicable to the leased premises; and provided further that the tax imposed for each transaction shall be not less than \$1. [L 1966, c 10, pt of §1; HRS §247-2; am L 1968, c 5, §3; am L 1979, c 73, §1; am L 1993, c 195, §2; am L 2005, c 156, §7]

Cross Reference

Tax Information Release No. 32-71, "Conveyance Tax — Imposition and Application of the Conveyance Tax Whenever Certain Leases Are Extended or Amended (Real Property)"

Tax Information Release No. 92-2, "The Administration and Application of the Conveyance Tax Law"

18-247-3 **§247-3 Exemptions.** The tax imposed by section 247-1 shall not apply to:

- (1) Any document or instrument that is executed prior to January 1, 1967;
- (2) Any document or instrument that is given to secure a debt or obligation;
- (3) Any document or instrument that only confirms or corrects a deed, lease, sublease, assignment, transfer, or conveyance previously recorded or filed;
- (4) Any document or instrument between husband and wife, reciprocal beneficiaries, or parent and child, in which only a nominal consideration is paid;
- (5) Any document or instrument in which there is a consideration of \$100 or less paid or to be paid;
- (6) Any document or instrument conveying real property that is executed pursuant to an agreement of sale, and where applicable, any assignment of the agreement of sale, or assignments thereof; provided that the taxes under this chapter have been fully paid upon the agreement of sale, and where applicable, upon such assignment or assignments of agreements of sale;
- (7) Any deed, lease, sublease, assignment of lease, agreement of sale, assignment of agreement of sale, instrument or writing in which the United States or any agency or instrumentality thereof or the State or any agency, instrumentality, or governmental or political subdivision thereof are the only parties thereto;
- (8) Any document or instrument executed pursuant to a tax sale conducted by the United States or any agency or instrumentality thereof or the State or any agency, instrumentality, or governmental or political subdivision thereof for delinquent taxes or assessments;
- (9) Any document or instrument conveying real property to the United States or any agency or instrumentality thereof or the State or any agency, instrumentality, or governmental or political subdivision thereof pursuant to the threat of the exercise or the exercise of the power of eminent domain;
- (10) Any document or instrument that solely conveys or grants an easement or easements;
- (11) Any document or instrument whereby owners partition their property, whether by mutual agreement or judicial action; provided that the value of each owner's interest in the property after partition is equal in value to that owner's interest before partition;
- (12) Any document or instrument between marital partners or reciprocal beneficiaries who are parties to a divorce action or termination of reciprocal beneficiary relationship that is executed pursuant to an order of the court in the divorce action or termination of reciprocal beneficiary relationship;
- (13) Any document or instrument conveying real property from a testamentary trust to a beneficiary under the trust;

- (14) Any document or instrument conveying real property from a grantor to the grantor's revocable living trust, or from a grantor's revocable living trust to the grantor as beneficiary of the trust;
- (15) Any document or instrument conveying real property, or any interest therein, from an entity that is a party to a merger or consolidation under chapter 414, 414D, 415A, 421, 421C, 425, 425E, or 428 to the surviving or new entity;
- (16) Any document or instrument conveying real property, or any interest therein, from a dissolving limited partnership to its corporate general partner that owns, directly or indirectly, at least a ninety per cent interest in the partnership, determined by applying section 318 (with respect to constructive ownership of stock) of the federal Internal Revenue Code of 1986, as amended, to the constructive ownership of interests in the partnership; and
- (17) Any document or instrument conveying real property to any nonprofit or for-profit organization that has been certified by the housing and community development corporation of Hawaii for low-income housing development. [L 1966, c 10, pt of §1; HRS §247-3; am L 1968, c 5, §§4 to 8; am L 1993, c 195, §3; am L 1997, c 383, §39; am L 1999, c 295, §1; am L 2002, c 40, §9; am L 2003, c 210, §4; am L 2005, c 196, §9]

Note

Chapter 415 referred to in text is repealed. For present provisions, see chapter 414.

Effective July 1, 2002, chapter 415B referred to in text is repealed. For provisions, effective July 1, 2002, see chapter 414D.

Chapter 425E replaces chapter 425D effective July 1, 2004. L 2003, c 210, §16.

Effective July 1, 2006, reference to "housing and community development corporation of Hawaii" in paragraph (17) renamed by L 2005, c 196.

18-247-4

§247-4 Payment and liability of the tax. (a) The tax imposed by this chapter shall be paid by the grantor, lessor, sublessor, assignor, transferor, seller, conveyor, or any other person conveying realty, or any interest therein, by a document or instrument subject to section 247-1; except, however, in the case where the United States or any agency or instrumentality thereof or the State or any agency, instrumentality, or governmental or political subdivision thereof is the grantor, lessor, sublessor, assignor, transferor, seller, or conveyor, the tax shall be paid by the grantee, lessee, sublessee, assignee, transferee, purchaser, or conveyee, as the case may be.

(b) The tax imposed by this chapter shall be paid at such place or places as the director of taxation may direct and shall be due and payable no later than ninety days after the taxable transaction, and in any event prior to the imprinting of the seal or seals as provided by section 247-5. Penalties and interest shall be added to and become a part of the tax, when and as provided by section 231-39. [L 1966, c 10, pt of §1; HRS §247-4; am L 1968, c 5, §9]

§247-4.5 Appeals. Any person aggrieved by any assessment of the tax imposed by this chapter may appeal from the assessment in the manner and within the time and in all other respects as provided in the case of income tax appeals by section 235-114. The hearing and disposition of the appeal, including the distribution of costs shall be as provided in chapter 232. [L 1992, c 147, §2; am L 2000, c 199, §9; am L 2004, c 123, §9]

Note

The 2000 amendment does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before June 8, 2000. L 2000, c 199, §§11 and 13.

The 2004 amendment applies to tax appeals filed on or after July 1, 2004. L 2004, c 123, §14.

Cross Reference

Tax Information Release No. 2002-1, "Audit of Net Income, General Excise, and Use Tax Returns; Appeal Rights; Claims for Refund; and Payment to State Under Protest"

18-247-5

§247-5 Imprinting of seal. The tax shall be evidenced as paid by the imprinting of an appropriate seal or seals on the document or instrument, which imprinting or seal itself shall indicate on its face the amount of the tax paid. The seal or seals shall be so imprinted upon the payment of the tax, together with the appropriate penalty and interest where applicable, and, in any event, prior to the recordation or filing of the document or instrument with the registrar of conveyances or the assistant registrar of the land court.

For the purposes of this chapter, the director may require that the documents or instruments be brought to any of the various offices of the department of taxation for an examination of the instrument or document, or for the purpose of having the seal imprinted on the document or instrument. [L 1966, c 10, pt of §1; am L 1967, c 293, §3; HRS §247-5; am L 1968, c 5, §10]

18-247-6

§247-6 Certificate of conveyance required. (a) Any party, with the exception of governmental bodies, agencies, or officers, to a document or instrument subject to this chapter, or the party's authorized representative, shall file, in the manner and place which the director of taxation shall prescribe, a certificate of conveyance setting forth the actual and full consideration of the property transferred, including any lien or encumbrance on the property, and such other facts as the director may by rules prescribe. The certificate of conveyance shall be verified by a written declaration

thereon that the statements made therein are subject to the penalties in section 231-36. The certificate shall be appended to the document or instrument made subject to this chapter and shall be filed with the director simultaneously with the aforementioned document or instrument for the imprinting of the required seal or seals.

(b) No certificate is required to be filed for any document or instrument made exempt by section 247-3, except that in the following situations, a certificate shall be filed in the manner and place which the director shall prescribe, within ninety days after the transaction or prior to the recordation or filing of the document or instrument with the registrar of conveyances or the assistant registrar of the land court or after such period, recordation, or filing as the director shall prescribe:

- (1) In the case of any document or instrument described under section 247-3(3), any party to the document or instrument shall file a certificate declaring that the document or instrument merely confirms or corrects a deed, lease, sublease, assignment, transfer, or conveyance previously recorded or filed.
- (2) In the case of any document or instrument described under section 247-3(4), any party to the document or instrument shall file a certificate declaring the amount of the nominal consideration paid and marital or parental relationship of the parties.
- (3) In the case of any document or instrument described under section 247-3(5), any party to the document or instrument shall file a certificate declaring the reasons why the consideration is \$100 or less.
- (4) In the case of any document or instrument described in section 247-3(6), any party to the document or instrument shall file a certificate declaring that the document or instrument is made pursuant to an agreement of sale, and where applicable, an assignment or assignments of agreements of sale.
- (5) In the case of any document or instrument described under section 247-3(8), any person made a party to the document or instrument as grantee, assignee, or transferee shall file a certificate declaring the full and actual consideration of the property transferred.
- (6) In the case of any document or instrument described under section 247-3(11), any party to the document or instrument shall file a certificate declaring each owner's:
 - (A) Undivided interest in the real property and the value of that interest before partition; and
 - (B) Proportionate interest and the value of that interest after partition.
- (7) In the case of any document or instrument described under section 247-3(12), any party to the document or instrument shall file a certificate declaring that the document or instrument is made pursuant to an order of the court and containing the court case number.
- (8) In the case of any document or instrument described under section 247-3(13), any party to the document or instrument shall file a certificate declaring that the document or instrument conveys real property from a testamentary trust to a trust beneficiary.
- (9) In the case of any document or instrument described under section 247-3(14), any party to the document or instrument shall file a certificate declaring that the document or instrument conveys real property from the grantor to a grantor's revocable living trust or from a grantor's revocable living trust to the grantor.

(c) The form of the certificate and the procedure to be followed for the submission of the certificate shall be prescribed by the director.

(d) Notwithstanding the foregoing, where the director deems it impracticable to require the filing of a certificate or certificates or to obtain the signatures of any or all parties to a certificate or certificates required under this section, the director may, in the director's discretion, waive the requirement of filing the certificate or certificates or of securing the signature of any or all parties to the certificate or certificates.

(e) No document or instrument, on account of which a certificate is required to be filed with the office of the director under this section, shall be accepted for recordation or filing with the registrar of conveyances or the assistant registrar of the land court, unless the certificate has been duly filed. [L 1966, c 10, pt of §1; am L 1967, c 293, §2; HRS §247-6; am L 1968, c 5, §§11 to 15; am L 1983, c 286, §1; am imp L 1984, c 90, §1; gen ch 1985; am L 1993, c 195, §4; am L 1995, c 92, §18]

Cross References

Bureau of conveyances, recording, see chapter 502.

Land court registration, see chapter 501.

Tax Information Release No. 92-2, "The Administration and Application of the Conveyance Tax Law"

Rules of Court

Recordation, see RLC rule 66.

[§247-6.5] Limitation period for assessment, levy, collection, or credit. The amount of conveyance taxes imposed by this chapter shall be assessed or levied, and the overpayment, if any, shall be credited within three years after filing of the certificate prescribed by section 247-6. No proceeding in court without assessment for the collection of the taxes shall be begun after the expiration of the three-year period.

In the case of a false or fraudulent certificate filed with the intent to evade tax, or of a failure to file a certificate, the tax may be assessed or levied at any time. [L 1993, c 195, §1]

§247-7 Disposition of taxes. All taxes collected under this chapter shall be paid into the state treasury to the credit of the general fund of the State, to be used and expended for the purposes for which the general fund was created and exists by law; provided that of the taxes collected each fiscal year:

- (1) Ten per cent shall be paid into the land conservation fund established pursuant to section 173A-5;
- (2) Thirty per cent shall be paid into the rental housing trust fund established by section 201G-432; and
- (3) Twenty-five per cent shall be paid into the natural area reserve fund established by section 195-9; provided that the funds paid into the natural area reserve fund shall be annually disbursed by the department of land and natural resources in the following priority:
 - (A) To natural area partnership and forest stewardship programs after joint consultation with the forest stewardship committee and the natural area reserves system commission;
 - (B) Projects undertaken in accordance with watershed management plans pursuant to section 171-58 or watershed management plans negotiated with private landowners, and management of the natural area reserves system pursuant to section 195-3; and
 - (C) The youth conservation corps established under chapter 193. [L 1966, c 10, pt of §1; HRS §247-7; am L 1993, c 195, §5; am L 1997, c 350, §11; am L 1998, c 170, §§2, 6; am L 1999, c 133, §2; am L 2000, c 269, §§2, 3; am L 2001, c 268, §2; am L 2005, c 156, §8]

18-247-8 §247-8 Refunds. The director of taxation may order the refund in whole or in part of any tax which has been erroneously or unjustly paid. The order shall be made in accordance with section 231-23. As to all tax payments for which a refund or credit is not authorized by this section (including, without prejudice to the generality of the foregoing, cases of unconstitutionality), the remedies provided by appeal or by section 40-35 are exclusive. [L 1966, c 10, pt of §1; HRS §247-8; am L 1994, c 19, §4]

18-247-9 §247-9 Enforcement and administration. The director of taxation shall administer and enforce the taxes imposed by this chapter. The director may prescribe rules and regulations not inconsistent with the provisions herein for their detailed and efficient administration. At any time after the making of a conveyance or transfer subject to the tax imposed by this chapter, the director may investigate and ascertain whether the tax, in the proper amount, was paid. For this purpose, the director may invoke all statutory powers vested in the director, including but not limited to section 231-7. [L 1966, c 10, pt of §1; HRS §247-9; am imp L 1984, c 90, §1; gen ch 1985]

Cross References

Rules, see chapter 91.

18-247-10 §247-10 Collection. All revenue laws relating to the assessment and collection of taxes are hereby extended to and made a part of this chapter, so far as applicable, for the purpose of collecting the tax imposed herein. [L 1966, c 10, pt of §1; HRS §247-10]

18-247-11,12 §247-11, 12 REPEALED. L 1995, c 92, §§30, 31.

§247-13 Short title. This chapter may be cited as the “Conveyance Tax Law.” [L 1966, c 10, pt of §1; HRS §247-13]

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